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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	DA 98-2410
Second Recommended Decision	)	

COMMENTS

BellSouth Corporation, on behalf of itself and its subsidiaries ("BellSouth"), hereby submits its comments on the Federal-State Joint Board's *Second Recommended Decision* released on November 25, 1998.<sup>1</sup>

I. INTRODUCTION

At the request of the state members of the Joint Board, the Commission referred to the Joint Board a number of issues relating to the scope and parameters of the federal high cost fund. The *Second Recommended Decision* is the result of the Joint Board's intensive review of these issues. Although BellSouth does not believe that the Commission should adopt all of the Joint Board's recommendations, overall the *Second Recommended Decision* brings to focus certain key issues. Foremost, the Joint Board recognizes that the universal service support that results from this proceeding represents federal support to universal service. The Joint Board correctly lays to rest the notion that the responsibility for such support is to be jurisdictionally allocated. Equally significant is that the Joint Board acknowledges that the Commission has the jurisdiction

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<sup>1</sup> In the Matter of Federal-State Joint Board on Universal Service, *Second Recommended Decision*, CC Docket No. 96-45, FCC 98J-7 (rel. November 25, 1998) ("*Second Recommended Decision*").

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and, thus, the responsibility to address the implicit universal service support that is embedded in interstate access charges.

## **II. DISCUSSION**

### **A. Purpose of Support**

In addressing the questions before it, the Joint Board defines its task as one to establish universal service mechanisms that ensure that consumers in high cost areas have access to telecommunications and information services that are affordable and reasonably comparable to those in urban areas, at rates reasonably comparable to those in urban areas.<sup>2</sup> The Joint Board believes that preserving universal service, as envisioned within the Communications Act, involves approaches that fall within the respective jurisdictional purview of the states and the Commission. The thrust of the Joint Board's recommendations is directed at establishing a federal fund that will contribute to the achievement of the statutory goals.

Before discussing the specific Joint Board recommendations, there are some observations of the Joint Board that merit attention. The Joint Board acknowledges the Commission's efforts in the universal service and access charge reform proceedings to reduce implicit support currently embedded in interstate access charges and to move such support to explicit federal mechanisms.<sup>3</sup> The Joint Board also finds that it is within the Commission's jurisdiction to address existing implicit support in interstate access charges and to determine the action it should take to make such support explicit.<sup>4</sup>

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<sup>2</sup> *Second Recommended Decision* ¶ 14.

<sup>3</sup> *Second Recommended Decision* ¶ 20.

<sup>4</sup> *Second Recommended Decision* ¶ 23.

The important step in fulfilling the statutory mandate of making existing implicit interstate support explicit thus falls to the Commission. Acting upon the Joint Board's recommendations does not bring to a close the chapter on the federal universal service fund. The Joint Board's recommendations frame the additional support the federal fund will provide to high cost areas above the amount of support that universal service currently receives explicitly and implicitly from the interstate jurisdiction. It is the Commission's responsibility to remove from interstate access charges implicit universal service support and have such amounts recovered through the federal universal service fund.

BellSouth and others have long advocated that carrier common line and presubscribed interexchange carrier charges are amounts that support universal service and should be recovered through an explicit support mechanism. By quickly and correctly addressing the implicit support in interstate access charges, the Commission could effectuate a substantial reduction in interstate access charges<sup>5</sup> and create a more rational, efficient and fair interstate cost recovery mechanism.<sup>6</sup>

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<sup>5</sup> The Joint Board has recommended that removal of implicit support in interstate access charges should be accompanied by reductions in interstate access charges such as the carrier common line ("CCL") charges, presubscribed interexchange carrier charges ("PICC") and subscriber line charges. *Second Recommended Decision* ¶ 23. Without question CCL and PICC charges should be reduced on a dollar-for-dollar basis to the extent that the Commission moves recovery of implicit support to the federal universal service fund. On the other hand, the only subscriber line charges that have been burdened by universal service support are multiline business SLCs. Thus, to the extent the Commission were to address the support provided by multiline business SLCs to universal service and permit a rebalancing of SLCs, such rebalancing could be effectuated through the federal universal service fund in order to address the affordability concerns of the Joint Board for single line business and residential services.

<sup>6</sup> The genesis of much of the implicit interstate support is the gross allocator contained in the jurisdictional separations process which is unaffected by the universal service or access charge reform deliberations of the Commission. Jurisdictional separations has generated universal service support in the past and will continue to do so. The Commission's charge under the statute is to provide for the recovery of this support on an explicit basis.

The Joint Board also recognizes that the state commissions share responsibility for the preservation of universal service but that under the statute the Commission may not mandate that a state establish an intrastate universal service fund. While the jurisdiction over intrastate universal service funds remains with the state commissions, the Commission should nonetheless encourage the states to take steps to address implicit support. The same competitive forces that necessitate the replacement of interstate implicit support mechanisms with explicit universal service support are also in operation in the intrastate jurisdiction. While the federal universal service fund could have been sized to include all existing interstate and intrastate implicit support, the current approach recommended by the Joint Board leaves undisturbed the majority of intrastate implicit support. Without substantial rate rebalancing of intrastate rates, the existing intrastate support is subject to competitive erosion. Shifting recovery of universal service support to an explicit mechanism would avoid such erosion and its attendant impact on universal service. Accordingly, the Commission should encourage the states to put in place explicit intrastate universal service funds to the extent such states believe that total rate rebalancing would negatively impact the affordability of universal service and thus would be imprudent.

#### **B. The High-Cost Funding Mechanism**

The Joint Board's recommendations regarding the high-cost mechanism cross several dimensions:

- (1) a tentative recommendation to calculate forward-looking costs based on a model;
- (2) costs should be averaged over a study area;
- (3) the level of support should reflect a state's ability to use its own resources to address its universal service needs, regardless of whether that or any other amount of support is explicitly provided by the state;

(4) a cost benchmark should be established against which the forward-looking costs of a study area would be compared. The study area would receive support if the study area costs substantially exceeded the national benchmark cost per line and such support were necessary to supplement a state's ability to address its own universal service needs; and

(5) a hold harmless level of federal support such that no carrier will receive less federal support than it currently receives from explicit support mechanisms.

The intent of the Joint Board's recommendations is to establish parameters for a federal universal service fund. Looking across all of the Joint Board's recommendations, however, there is considerable question regarding the need and purpose of some of the features of the Joint Board's plan. To begin, the Joint Board reaffirms its earlier belief that the federal high cost fund should be based on forward-looking economic costs.<sup>7</sup> This belief, however, contrasts with other pragmatic determinations made by the Joint Board.

In particular, the Joint Board supports the Commission's commitment<sup>8</sup> to hold states harmless in its implementation of a new, explicit federal universal service such that no non-rural carrier would receive less federal high cost assistance than the amount it currently receives from explicit support mechanisms.<sup>9</sup> Honoring this commitment effectively keeps in place the jurisdictional separations-based determination of high cost study areas and interstate high cost support. This separations-based calculation becomes the floor of the federal universal service fund. A forward-looking methodology has no place in this calculation and is unnecessary.

Further, the Joint Board has recommended that the study area continue to be used for the purpose of determining any additional high-cost support (*i.e.*, any amount over existing high cost

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<sup>7</sup> *Second Recommended Decision* ¶ 27.

<sup>8</sup> *Federal-State Joint Board On Universal Service, Report to Congress, CC Docket No. 96-45, 13 FCC Rcd 11501 (1998).*

<sup>9</sup> *Second Recommended Decision* ¶ 53.

support). Calculating support at a study area level does not require the use of a disaggregated, forward-looking cost-method. Indeed, the Joint Board, in its recommendations, foresees the possibility of additional high-cost support based on a yet to be determined difference between a given study area's costs and the nationwide average. To the extent that the Joint Board and the Commission decide to provide additional high cost support to a study area, a forward-looking cost methodology is not necessary to effectuate such an objective. It could be accomplished through methods that are less complex and costly. For example, existing separations data could be used.<sup>10</sup>

Commissioner Furchtgott-Roth, dissenting in part from the Commission's adoption of cost model platform, expressed concern that adoption of a cost model platform was particularly questionable before the Joint Board issued its recommended decision. Commissioner Furchtgott-Roth did not believe that a federal model was necessary or advantageous to size or to allocate a fund for non-rural high-cost carriers.<sup>11</sup> Based on recommendations set forth in the *Second Recommended Decision*, Commissioner Furchtgott-Roth's prognostications have proven quite accurate. In these circumstances, it is appropriate for the Commission to step back and reevaluate the decision to expend considerable time and resources on the development of a forward-looking cost model for which there is no apparent purpose or need. Accordingly, the

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<sup>10</sup> The task before the Commission is to determine which study areas should receive additional support. That task is not simplified by the use of a forward-looking cost method nor is it made more difficult by the use of a separations-based method.

<sup>11</sup> See Statement of Commissioner Harold Furchtgott-Roth Dissenting In Part, *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, and *Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket No. 97-160, *Fifth Report and Order*, (rel. October 28, 1998).

Commission should not adopt the recommendation that a forward-looking cost model be employed in the calculation of the federal universal service fund.

The Joint Board's recommendation to tie additional federal high cost support to both a cost benchmark and a state's ability to fund universal service is questionable. While the use of cost benchmark is a proven approach for providing universal service support to high cost areas, coupling such an approach to a state's ability to fund universal service through its own implicit or explicit support mechanisms is contrary to the purpose of universal service provisions of the Act. The purpose of Section 254 was to establish an explicit federal mechanism to support universal service in high cost areas. The fact that a carrier in a particular state may also serve areas that are not deemed to be high cost does not diminish the need for a federal universal service fund to support universal service in the high cost areas of the state.

The cost benchmark will identify the study areas that should receive additional federal support. To deny such support on the grounds that a state can "handle" its own universal support requirements turns the Communications Act on its head. The Communications Act establishes a mandate for a federal fund. The essence of such a fund is to establish a uniform, nationwide mechanism that provides comparable support in all high cost areas. The Joint Board's recommendation converts a nondiscriminatory, competitively neutral, mandated explicit federal fund into an optional, implicit state mechanism over which the Commission has no jurisdictional authority. Such a result can hardly be considered consistent with the intent of Section 254 of the Act.

Further, the Joint Board's recommendation regarding the parameters that evidence a state's ability to handle its own universal service needs is so indeterminate that it could not be

implemented. All that the recommendation does is to create yet another open-ended issue to be endlessly debated. Rather than bringing closure to issues surrounding the high cost fund, this particular Joint Board recommendation would introduce another level of uncertainty.

While a cost benchmark is a reasonable approach for determining high cost support, the Commission should not contaminate the federal high cost fund with an arbitrary factor such as a state's ability to handle universal service. A cost standard can be quickly implemented.<sup>12</sup> In addition, such a standard is consistent with the principles of competitive neutrality, portability and predictability that should characterize federal universal service support. For these reasons, the Commission should only consider favorably that portion of the Joint Board's recommendation that calls for a cost benchmark for determining additional support to high cost areas.<sup>13</sup>

The Joint Board's recommendation that high cost support be calculated on a study area basis represents a workable approach.<sup>14</sup> Use of a study area would be consistent with the Commission's commitment, which the Joint Board supports, to hold states harmless so that they continue to receive the same level of support that they currently receive. Once the support for a study area is determined, the support can then be distributed on a wire center basis. There are numerous techniques and methods already available to accomplish the disaggregation of study area support (which have been discussed during the course of this proceeding) so that very little

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<sup>12</sup> The existing explicit high cost fund is based on a cost standard and could be modified to incorporate additional support based on the cost thresholds determined by the Commission.

<sup>13</sup> For the reasons discussed above, the benchmark should not be based on a forward-looking cost model.

<sup>14</sup> *Second Recommended Decision* ¶ 33.

effort would be necessary to establish an approach for the federal high cost fund. Nevertheless, it is important that the Commission affirm that the support for a study area be disaggregated and associated with specific wire centers. Such disaggregation will ensure that the universal service support is associated with high cost wire centers.<sup>15</sup>

BellSouth also endorses the Joint Board's tentative recommendation that the Commission reassess the basis upon which it determines universal service contributions if the Fifth Circuit upholds the Commission's authority to use total revenues for assessing universal service contributions. In BellSouth's view, assessing high cost contributions on the basis of total interstate and intrastate retail revenues provides the most equitable and competitively neutral assessment mechanism given the increasing blur between interstate and intrastate revenues.<sup>16</sup>

With regard to recovery of universal service contributions, it is important for the Commission to make clear that incumbent local exchange carriers have the right to recover universal service contributions in the same manner as other telecommunications carriers, including a separate line item on an end user's bill. The Joint Board devotes most of its discussion regarding how such charges should be characterized on a carrier's bill. The Joint Board acknowledges that the Commission is considering such issues in its *Truth-In-Billing*

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<sup>15</sup> Distributing the support on a wire center basis will have the salutary benefit of obviating the need for an onerous certification process by the states that the universal service support is being applied in a manner consistent with Section 254 of the Act.

<sup>16</sup> States could likewise use both interstate and intrastate revenues for determining contributions to any parallel intrastate universal service fund. Such a mechanism if used both by the Commission and the states would ensure that the universal service principles that the Commission has adopted are fulfilled.

proceeding.<sup>17</sup> The ultimate resolution of such matters are properly left to the *Truth-In-Billing* proceeding. While the Commission may provide some interim guidance here, the Commission should not preclude carriers from identifying the charge as recovery of a contribution to a federal universal service fund.

### III. CONCLUSION

The Joint Board has engaged in a substantial review of the parameters for a federal high cost fund. Their analysis should provide focus and facilitate the resolution of outstanding issues so that the Commission can move forward and establish a federal fund that fulfills the requirements of the Communications Act.

Respectively submitted,

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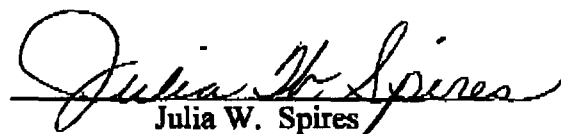
Date: December 22, 1998

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<sup>17</sup> *In the Matter of Truth-in-Billing and Billing Format, Notice of Proposed Rulemaking*, CC Docket No. 98-170, FCC 98-232 (rel. September 17, 1998).

**CERTIFICATE OF SERVICE**

I do hereby certify that I have this 23<sup>rd</sup> day of December 1998 served the following parties to this action with a copy of the foregoing COMMENTS by hand delivery or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed on the attached service list.

  
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